



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

FOP/143073

PRELIMINARY RECITALS

Pursuant to a petition filed on August 14, 2012, under Wis. Admin. Code §HA 3.03, to review a decision by the Racine County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on September 11, 2012, at Racine, Wisconsin. This case is connected to case MOP/143072, CCO/143070, FOP/143069, MOP/143068, and CCO/143067.

The issue for determination is whether the Racine County Department of Human Services (herein after referred to as the agency) correctly determined that Petitioner was over-issued FoodShare benefits in the amount of \$13,165.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Dean Landvatter, Fraud Coordinator
Racine County Department of Human Services
1717 Taylor Ave.
Racine, WI 53403-2497

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Racine County.
2. During all relevant times, Petitioner resided at [REDACTED]
3. The father of Petitioner's two children, [REDACTED] ([REDACTED]), lived with the Petitioner.
4. Petitioner and [REDACTED] purchased the [REDACTED] residence in October 2007. (Testimony of Petitioner)
5. Both of their names are listed as responsible parties for utilities and both contribute money towards the mortgage. (Testimony of Petitioner)
6. [REDACTED] receives his mail at the [REDACTED] address (Testimony of Petitioner and [REDACTED])
7. Petitioner and [REDACTED] had their first child in December 2007 and they had a second child in October 2008. (Id.)
8. In May 2009, Petitioner and [REDACTED] filed a police report regarding an individual who was breaking into their garage. At that time, [REDACTED] provided the police with the [REDACTED] address as his address. (Testimony of Petitioner and [REDACTED] and Exhibit 5)
9. In June 2010, [REDACTED] filed a police report indicating that someone had forged/alterd a money order that he purchased without his permission. At that time, [REDACTED] told police that his address was [REDACTED]. (Testimony of [REDACTED] and Exhibit 6)
10. In July 2011, [REDACTED] got into an accident in a parking lot. At that time, he told police he lived at [REDACTED]. (Testimony of [REDACTED] and Exhibit 7)
11. Inv. John Lucci conducted surveillance between April 30, 2012 and May 15, 2012 and observed [REDACTED] going from the [REDACTED] residence to his place of employment and back again. (Testimony of Inv. Lucci and Exhibit 3)
12. On July 9, 2012, the agency sent Petitioner four Notifications of FoodShare Overissuance:
 - a. Claim Number [REDACTED] for \$5453.00 for the period of 01/01/09 to 12/31/09
 - b. Claim Number [REDACTED] for \$2744.00 for the period of 01/01/10 to 12/31/10
 - c. Claim Number [REDACTED] for \$3625.00 for the period of 01/01/11 to 12/31/11
 - d. Claim number [REDACTED] for \$1313.00 for the period of 01/01/12 to 05/31/12

(Exhibits 24-27)
13. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on August 14, 2012. (Exhibit 1)

DISCUSSION

The federal regulation concerning FoodShare overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FoodShare due to an intentional program violation, an inadvertent household error (also known as a "client error"), or an agency error (also known as a "non-client error"). 7 C.F.R. § 273.18(b); see also *FoodShare Wisconsin Handbook (FSH)*, App. § 7.3.2.1. As such, it does not matter whose error caused the overpayment; it must be recouped.

In a Fair Hearing concerning the propriety of an overpayment determination, the county agency has the burden of proof to establish that the action taken by the county was proper given the facts of the case. The petitioner must then rebut the county agency's case and establish facts sufficient to overcome the county agency's evidence of correct action.

The Federal FoodShare regulations define FoodShare household composition as follows:

General household definition. (a) A household is composed of one of the following individuals or groups of individuals, unless otherwise specified in paragraph (b) of this section:

1. An individual living alone;
2. An individual living with others, but customarily purchasing food and preparing meals for home consumption separate and apart from others; or
3. A group of individuals who live together and customarily purchase food and prepare meals together for home consumption.

7 C.F.R. §273.1(a) See in accord, FS Wisconsin Handbook, §§3.3.1.1; 3.3.1.2 and 3.3.1.3 .

To receive FoodShare benefits a household must have income below gross and net income limits though the gross income test does not apply where a household has a member over age 60. *7 Code of Federal Regulations (CFR), §273.9(b); FoodShare Wisconsin Handbook (FSH), § 1.1.4.* The agency must budget all income of the FS household, including all earned and unearned income. *7 CFR § 273.9(b); FoodShare Wisconsin Handbook (FSH), § 4.3.1.* The allotment calculation is based on prospectively budgeted monthly income using estimated amounts. *FSH, §4.1.1.*

In the case at hand, Petitioner did not dispute that she received FoodShare benefits in the amounts stated in aforementioned claims, nor does she quarrel with the agency's calculation of the overpayment. However, Petitioner contests the agency's assertion that [REDACTED] was part of her household during the times in question and argues that his income should not be counted as part of her household income.

It is Petitioner's assertion that [REDACTED] lived with her only from the fall of 2007 until some unspecified time in 2008, after which time, Petitioner contends [REDACTED] lived with his mother. Petitioner further stated that [REDACTED] had only recently begun residing with her again in June 2012. Petitioner's assertion that [REDACTED] resided with his mother between January 1, 2009 and May 31, 2012, is simply not credible.

First, Petitioner couldn't recall when in 2008 [REDACTED] allegedly moved out of the residence. Second, neither Petitioner, nor [REDACTED] could produce any paperwork showing that [REDACTED] lived anywhere other than [REDACTED] between 2009 and 2012. Third, Petitioner and [REDACTED] provided inconsistent addresses. Petitioner testified that she believed [REDACTED] was residing at [REDACTED]. However, [REDACTED] testified that he lived at several different addresses with his mother on [REDACTED], [REDACTED] and most recently [REDACTED]. [REDACTED] also testified that he lived with various other women during the time in question, but was extremely vague regarding his exact residence between January 2009 and April 2012. Fourth, Petitioner told Investigator Lucci that [REDACTED] did, in fact, live with her at least "part time" or half of the time. Fifth, [REDACTED]'s mother testified that between January 2010 and April 2012, [REDACTED] kept his belongings at her address, but he did not have his own room and his name was not on any lease that she would have had. Sixth, she further testified that [REDACTED] might spend the night with her, on average, two nights per week. Seventh, [REDACTED]'s mother testified that prior to January 2010, she did live at the [REDACTED] address with [REDACTED] and his father, but [REDACTED] was still only there on an inconsistent basis.

Based upon the foregoing, it is found that Petitioner's assertion, that [REDACTED] was living with his mother during the time in question, is not credible.

The preponderance of the credible evidence supports a finding that [REDACTED] has resided with Petitioner between January 1, 2009 and May 31, 2012. First, Petitioner and [REDACTED] purchased the home together in the fall of 2007. Second, they produced two children between 2007 and 2008. Third, both names are listed as the responsible parties on utilities and both contribute to the mortgage and property taxes. Fourth, [REDACTED] has told police in 2009, 2010 and 2011 that his address is with Petitioner, at [REDACTED]. Fifth, Investigator Lucci testified credibly that when he went to the [REDACTED] address to interview Petitioner, she allowed him to look in the bedroom and he observed male clothing and shoes in the closet, which Petitioner identified as [REDACTED]'s. Sixth, Investigators Muller and Lucci both testified credibly that they were also allowed to look in a closet on the first floor and observed three male jackets in the closet, which Petitioner also identified as [REDACTED]'s. Seventh, Investigator Lucci conducted surveillance upon [REDACTED] and observed him moving between the West Boulevard address and his place of employment during the course of at least two work days in May 2012.

Based upon the foregoing, I find that the agency has met its burden to prove that [REDACTED] was living with Petitioner during the entire overpayment period, January 1, 2009 through May 31, 2012 and that his income should have been counted in determining Petitioner's eligibility and allotment for FoodShare benefits.

CONCLUSIONS OF LAW

1. The agency has met its burden to prove that Petitioner was over-issued FoodShare benefits as stated in Claim Number [REDACTED] in the amount of \$5453.00 for the period of 01/01/09 to 12/31/09.
2. The agency has met its burden to prove that Petitioner was over-issued FoodShare benefits as stated in Claim Number [REDACTED] in the amount of \$2744.00 for the period of 01/01/10 to 12/31/10.
3. The agency has met its burden to prove that Petitioner was over-issued FoodShare benefits as stated in Claim Number [REDACTED] in the amount of \$3625.00 for the period of 01/01/11 to 12/31/11.
4. The agency has met its burden to prove that Petitioner was over-issued FoodShare Benefits as stated in Claim number [REDACTED] for \$1313.00 for the period of 01/01/12 to 05/31/12.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

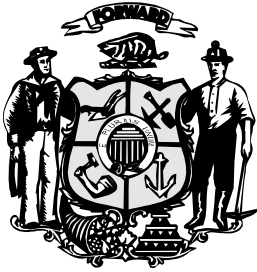
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 20th day of September, 2012.

Mayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals

c: Racine County Department of Human Service – email
Department of Health Services – email



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The preceding decision was sent to the following parties on September 20, 2012.

Racine County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability